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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,520	07/18/2004	Brenda S. Hobson	228412082003	4519

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EXAMINER
D ADAMO, STEPHEN D

ART UNIT	PAPER NUMBER
3636	

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/710,520	HOBSON, BRENDA S.	
	Examiner	Art Unit	
	Stephen D'Adamo	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3* is/are pending in the application.

4a) Of the above claim(s) *3* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 July 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1 and 2, drawn to a device for securing a user's head, classified in class 297, subclass 393.

II. Claim 3, drawn to a method for securing a user's head, classified in class 297, subclass 463.2.

2. Inventions I and II are related as method of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the method as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by other and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by a materially different method such as affixing the hat to the seat and then affixing the user's head to the hat.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Michael Greenberg on 4 October 2004 a provisional election was made with traverse to prosecute the invention of the apparatus, claims 1 and 2. Affirmation of this election must be made by applicant in replying to this Office action. Claim 3 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

5. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

6. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the Figures and/or photographs are generally unclear and further fail to show the details f the invention. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Objections

7. Claims 1 and 2 objected to because of the following informalities:

In claims 1 and 2 “user”s” should have an apostrophe instead of quotation marks

In claim 1, line 7, “lop” should be corrected to “loop”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the point" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

It is indeterminate as to whether applicant's independent claims, each individually assessed as a whole, are drawn to an apparatus per se or to the combination of an apparatus and *a device for maintaining a user's head against a seatback*. The conclusion is reached for the reason that the opening recitation of the preamble in applicant's claim sets forth that the claimed invention is to "an apparatus" or *a device*. This opening recitation is followed by a recitation that the claimed apparatus is "*for maintaining a user's head against a seatback*". However, further within the claims, the applicant positively claims "*the head*" and "*the seatback*".

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Scher (6,607,245). Scher discloses a head restraint comprising a hat 34, a first hook and loop type fastener 19 and a second hook and loop type fastener 20, disclosed in Figure 6. Scher cites, "securement straps 19 and 20 are sewn to a cap 34 by user 35, although they could, of course, also be affixed by hook and eye fasteners" (col.3, lines 1-3). Therefore, a first piece of hook and eye type fastener of strap 19 is in communication with the hat 34 while a second hook and eye type fastener of strap 20 is attached to the seatback.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Meistrell (4,707,031).

Meistrell discloses a head restraint comprising a hat or head band 30 (seen in Figure 4), a first hook and loop type fastener 35 and a second hook and loop type fastener 36. The first hook and loop type fastener is in communication with the hat and the second hook and loop type fastener is attached to the child seat 34 or seatback. Furthermore, as disclosed in Figure 5, the first hook and loop type fastener is positioned on the hat at a point where the head conventionally rests against the seatback.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacy (5,211,696) in view of Scher (6,607,245).

Lacy discloses a head support for a vehicle seat comprising a first hook and loop type fastener 51 and a second hook and loop type fastener 48. The second hook and loop type fastener is attached to the seat back while the first hook and loop type fastener is in communication with the pillow 50. The first hook and loop type fastener is positioned at a point where the head conventionally rests against the seatback. However, Lacy fails to expressly disclose a hat instead of a pillow. Yet, Scher teaches of a head restraint or support with first and second hook and loop type fasteners including a hat 34. Scher cites, "securement straps 19 and 20 are sewn to a cap 34 by user 35, although they could, of course, also be affixed by hook and eye fasteners" (col.3, lines 1-3). Therefore, a first piece of hook and eye type fastener of strap 19 is in communication with the hat 34 while a second hook and eye type fastener of strap 20 is attached to the seatback. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the head support pillow of Lacy with a hat, as taught by Scher, for restricting the movement of a user's head.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Silva (6,554,363), Galbreath (5,979,983), Garth et al. (5,360,393), Liu (5,081,714), del Fierro (4,607,885), Miller (4,182,322), Tomlinson (3,782,396), Taborro (2002/0067063) and Walters (2004/0123375) all show various features of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173. The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SD
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October 4, 2004

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